

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariel Courage	Team: Squad #6	CCRB Case #: 201510169	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 11/28/2015 3:00 AM	Location of Incident: Blake Avenue and Bradford Street and the 75th Precinct stationhouse	Precinct: 75	18 Mo. SOL 5/28/2017	EO SOL 5/28/2017	
Date/Time CV Reported Sat, 11/28/2015 3:58 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 11/28/2015 3:58 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SSA Robert Martinez	01369	922716	075 PCT
2. POM William Schumacher	04618	949640	075 PCT
3. SGT Steven Farrell	01044	921324	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SSA Robert Martinez	Abuse: At Blake Avenue and Bradford Street in Brooklyn, SSA Robert Martinez stopped § 87(2)(b)	
B.SSA Robert Martinez	Discourtesy: At Blake Avenue and Bradford Street in Brooklyn, SSA Robert Martinez spoke discourteously to § 87(2)(b)	
C.SSA Robert Martinez	Abuse: At Blake Avenue and Bradford Street in Brooklyn, SSA Robert Martinez frisked § 87(2)(b)	
D.SSA Robert Martinez	Abuse: At Blake Avenue and Bradford Street in Brooklyn, SSA Robert Martinez searched § 87(2)(b)	
E.POM William Schumacher	Discourtesy: At Blake Avenue and Bradford Street in Brooklyn, PO William Schumacher spoke discourteously to § 87(2)(b)	
F.POM William Schumacher	Force: At Blake Avenue and Bradford Street in Brooklyn, PO William Schumacher used physical force against § 87(2)(b)	
G.SGT Steven Farrell	Abuse: At the 75th Precinct stationhouse, Sgt. Steven Farrell did not process § 87(2)(b)'s complaint regarding officers.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On November 28, 2015, § 87(2)(b) filed this complaint with the CCRB via DiRAD message (BR 01).

This case is being submitted for review five days past the 90-day benchmark because PO Schumacher missed three scheduled appearances before he provided a statement, while Sgt. Farrell and PO Braun each missed one scheduled appearance before providing a statement.

On November 28, 2015, at approximately 3 a.m., on the north side of Blake Avenue near its intersection with Bradford Street in Brooklyn, PO William Schumacher and SSA Robert Martinez of the 75th Precinct stopped § 87(2)(b) (**Allegation A**). SSA Martinez allegedly said, “Asshole, don’t you hear the police calling you?” (**Allegation B**) § 87(2)(b) was speaking to a friend via a cell phone headset at the time of the stop; SSA Martinez told § 87(2)(b) “You don’t need to be on your fucking phone. Get off the fucking phone,” (subsumed under **Allegation B**). SSA Martinez asked § 87(2)(b) “Where the fuck are you going?” (subsumed under **Allegation B**).

§ 87(2)(b) held his hands in the pockets of his hoodie. When he went to remove them, SSA Martinez told him to keep his hands in his pockets, asked him what he had in his pockets, and asked him if he was carrying any weapons. SSA Martinez frisked the exterior pockets of § 87(2)(b)’s hooded jacket (**Allegation C**), reached into both exterior pockets (**Allegation D**), and then proceeded to frisk § 87(2)(b)’s sweatpants pockets (subsumed under **Allegation C**).

§ 87(2)(b) acknowledged that he carried a soft package of newly-purchased underwear in his right sweatpants pocket, and a roll of money, or approximately \$126 in folded-over bills, behind the package of underwear. The package of underwear, as well as the money behind it, created a bulge in § 87(2)(b)’s sweatpants. When SSA Martinez felt this bulge, he allegedly asked, “What the fuck is that?” (subsumed under **Allegation B**). § 87(2)(b) believed that SSA Martinez had felt the money underneath the package of underwear; in response to SSA Martinez’s question, § 87(2)(b) withdrew the aforementioned \$126 and displayed it to SSA Martinez.

SSA Martinez requested § 87(2)(b)’s identification. When § 87(2)(b) replied that he was not carrying identification, SSA Martinez allegedly said, “I don’t know if you’re fucking wanted,” (subsumed under **Allegation B**).

SSA Martinez then walked away from the scene, leaving § 87(2)(b) with PO Schumacher. PO Schumacher ordered § 87(2)(b) to cross his legs. When § 87(2)(b) refused, PO Schumacher allegedly said, “If you’re not going to cross your legs, I’m going to put you in fucking handcuffs,” (**Allegation E**). When § 87(2)(b) again refused, PO Schumacher kned § 87(2)(b) in his testicles, gripped § 87(2)(b) turned him to face a vehicle parked at the curb, and pushed him against it (**Allegation F**). PO Schumacher did not handcuff § 87(2)(b). Once SSA Martinez returned, PO Schumacher released his hold upon § 87(2)(b). PO Schumacher told § 87(2)(b) “I didn’t want you to fucking run on me,” (subsumed under **Allegation E**).

SSA Martinez told § 87(2)(b) “What the fuck are you doing over here? Don’t you know about this fucking area? Do you know what the fucking crime rate is around here? We’re just trying to get guns off the street,” and, “Do you know what the fuck I can do to you because you got no fucking ID on you?” (subsumed under **Allegation B**)

§ 87(2)(b) was neither arrested nor issued summonses. As the officers were leaving the scene, § 87(2)(b) announced that he was going to go to the 75th Precinct stationhouse to

- § 87(2)(b)
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- SSA Martinez has been a member of the service for 17 years. There are 80 allegations against him stemming from 30 prior complaints that occurred between 2000 and the present date, the following of which have been substantiated:
 - In CCRB case 200205713, an allegation of discourtesy – specifically, that SSA Martinez said, “I don’t have to fucking do that” – was substantiated. The Board recommended charges and the NYPD penalty was Command Discipline A.
 - In CCRB case 200704280, allegations of physical force and threat of force were substantiated. The Board recommended charges and the NYPD took no disciplinary action.
 - In CCRB case 201101407, allegations of a stop and frisk were substantiated. The Board recommended command discipline and the NYPD disposition was instructions.
 - In CCRB case 201310387, an allegation of physical force was substantiated. The Board recommended charges. The NYPD disposition is pending.
 - § 87(4-b) § 87(2)(g)
- PO Schumacher has been a member of the service for 5 years. There are 21 complaints against him across 7 prior cases that occurred from 2012 through the present, the following of which have been substantiated:
 - In CCRB case 201204235, allegations of entry and search of a premises and physical force were substantiated. PO Schumacher was also cited for other misconduct for intentionally making a false official statement. The Board recommended charges and the NYPD disposition is pending.
 - In CCRB case 201506191, an allegation of discourtesy – specifically, that PO Schumacher said, “Get the fuck back” – was substantiated. The Board recommended Command Discipline A and the NYPD disposition is pending.
- Sgt. Steven Farrell has been a member of the service for 17 years. There is one prior allegation against him from a case that occurred in 2010, which was not substantiated.

§ 87(2)(g)

Potential Issues

- § 87(2)(b) reported the incident location as Bradford Street and Dumont Avenue in Brooklyn (BR 01 and 19). On December 14, 2015, field work was performed to canvass for video footage at that location with negative results (BR 05). A request to TARU for video footage from a camera mounted on Dumont Avenue between Bradford Street and Miller Avenue was returned with negative results (BR 06).

Because § 87(2)(b) was not arrested or issued summonses, and because requests for a computerized and handwritten Stop, Question, and Frisk report were returned with negative results (BR 07 and 08), because SSA Martinez made no memo

book entries about this incident (BR 09), and because PO Schumacher did not provide his memo book, it was not until about two months after the incident date, on January 22, 2016, when SSA Martinez was interviewed (BR 10), that the incident's location was clarified as being Blake Avenue, not Dumont Avenue, and Bradford Street. As such, no video footage of this incident was obtained.

- § 87(2)(b) refused to provide the name of the friend whose house he was trying to reach, though he was informed this might impede the investigation of his complaint.

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) described the officer who spoke discourteously to him, questioned him, frisked him, and searched him as a white male wearing a gold shield, 6'2" tall, in his mid-twenties to thirties, with muscular build, and bald. Because both SSA Martinez and PO Schumacher acknowledged some level of interaction with § 87(2)(b) and because of the two of them, SSA Martinez, a § 87(2)(b)-old Hispanic male, bald, and about 6'1" tall (BR 11), most closely matches this description, these allegations have been pleaded against him. § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- § 87(2)(b) described the officer who spoke discourteously to him, kneed him, and pushed him against the vehicle as a white male, about 5'7" tall, with sandy brown hair, skinny, and about 20 to 25 years old. Because PO Schumacher acknowledged interacting with § 87(2)(b) and as a § 87(2)(b)-old white male, 5'8" tall, 180 pounds, with brown hair (BR 12), closely matches the given description, these allegations have been pleaded against him.
- § 87(2)(b) said that when he went to the 75th Precinct stationhouse to file a complaint about this incident, he spoke to an officer, described as a Hispanic male, 6'1" tall, slimly built, about 30 years old, at the front desk. When § 87(2)(b) said he wanted to file this complaint, the officer said he had to consult with his supervisor. As the supervisor was in another room behind the desk, § 87(2)(b) never saw him. When the officer returned to the front desk, he told § 87(2)(b) that they did not have any forms to give him, and that they would have to download them online and print them out. § 87(2)(b) who believed that this officer was trying to discourage him from filing a complaint, asked for the name of the supervisor. The officer told him the supervisors name was "Sgt. Demarcos." At 3:58 a.m., § 87(2)(b) decided to simply call the CCRB, whose number he obtained from a sign posted near the front desk, to file a complaint instead.

A search of CTS revealed no Sergeant "Demarcos," or any officer loosely matching that name, at the 75th Precinct. The 75th Precinct Roll Call (BR 13) noted the following officers as working behind the desk during tour 1 of November 28, 2015: PO Richard Braun, the telephone switchboard operator (who is a § 87(2)(b)-old white male, 6'2" tall, 220 pounds, with brown hair and green eyes (BR 14)), and the desk officer, Sgt. Steven Farrell, a § 87(2)(b)-old white male, 5'9" tall, 235 pounds, bald, with blue eyes (BR 15). As per PO Braun's memo book (BR 16) and CCRB testimony (BR 17), he was reassigned from the telephone switchboard operator to a mobile command post at 2:15

AM, and he denied that he was present at the desk at the time of this incident; additionally, he does not match the description provided by § 87(2)(b) PO Braun did not know which officer replaced him at the front desk. In his CCRB testimony (BR 18), Sgt. Farrell acknowledged speaking to § 87(2)(b) about his desire to file a complaint against an officer. Sgt. Farrell did not recall PO Braun being reassigned, and did not recall any other officer working with him behind the desk.

In the absence of further evidence, the investigation cannot identify the officer with whom § 87(2)(b) claimed to have spoken.

Sgt. Farrell, however, was undisputedly the supervisor at the desk at the time § 87(2)(b) went to file his complaint; as such, it ultimately was his responsibility to ensure that a complaint was filed on his behalf. Moreover, Sgt. Farrell acknowledged interacting with § 87(2)(b) § 87(2)(g)

Allegations Not Pleaded

- **Question:** Although it is undisputed that SSA Martinez questioned § 87(2)(b) about the bulge at the right side of his pants, it is disputed at what point during the stop SSA Martinez questioned § 87(2)(b) about the bulge, frisked him, and searched him. § 87(2)(g)
- **Frisk:** PO Schumacher said that he frisked § 87(2)(b). Because § 87(2)(b) did not allege this, it has not been pleaded.
- **Threat of Arrest:** § 87(2)(b) alleged that PO Schumacher said, “I’m going to put you in fucking handcuffs.” As merely placing someone in handcuffs does not necessarily constitute an arrest, it has been assessed as a discourtesy and no corresponding threat of arrest has been pleaded. § 87(2)(b) also alleged that SSA Martinez said, “Do you know what the fuck I can do to you because you got no fucking ID on you?” § 87(2)(g)

Allegation A – Abuse of Authority: At Blake Avenue and Bradford Street in Brooklyn, SSA Robert Martinez stopped § 87(2)(b)

It is undisputed that § 87(2)(b) changed directions multiple times as he walked in the general area of Blake Avenue and Bradford Street in Brooklyn, and that SSA Martinez stopped § 87(2)(b)

§ 87(2)(b) (BR 19) said that he was trying to find his friend’s house (he could not remember his friend’s address at the time of his CCRB interview). It was 3 a.m., and dark on the street, and § 87(2)(b) was not from the area, so he was having difficulty finding the house. The friend was looking out of his window giving § 87(2)(b) directions via § 87(2)(b)’s cell phone headset while § 87(2)(b) walked back and forth in the general vicinity of Bradford Street and a street that § 87(2)(b) believed to be Dumont Avenue. § 87(2)(b) paused in a particularly “dark spot” on Bradford Street, he realized that he had been walking in the wrong direction and had to double back, at which time he noticed an unmarked vehicle following his movements.

The officers in the unmarked vehicle, SSA Martinez and PO Schumacher, then pulled level to § 87(2)(b) stopped, and approached him, saying, “Asshole, don’t you hear the

police calling you?” § 87(2)(b) replied, “I didn’t hear anything. I’m on a call.” SSA Martinez told him, “You don’t need to be on your fucking phone. Get off the fucking phone.” § 87(2)(b) hung up. SSA Martinez then asked § 87(2)(b) where the “fuck” he was going him, ordered him to keep his hands in his pockets, asked him if he was carrying any weapons, and then proceeded to frisk him.

SSA Martinez (BR 10) said that the entire precinct is prone to vehicle break-ins and thefts, including commercial vans. This condition is not specific to the area of Bradford Street and Blake Avenue. SSA Martinez was driving at about five miles per hour east on Blake Avenue when he made a left turn onto Bradford Street. As he turned, SSA Martinez saw § 87(2)(b) walking north on the east side of Bradford Street. After observing § 87(2)(b) for about a second, § 87(2)(b) turned from the sidewalk and walked in between two vehicles, one of which was some kind of commercial van and the other of which SSA Martinez could not remember, parked at the curb on the east side of Bradford Street; when he did so, SSA Martinez lost sight of § 87(2)(b). SSA Martinez continued driving north on Bradford Street until he was approximately level with § 87(2)(b). SSA Martinez saw § 87(2)(b) standing at the front of the van, about two feet away from it, near the sidewalk. SSA Martinez could not remember what part of § 87(2)(b)’s body was facing the van. SSA Martinez did not remember § 87(2)(b) being on his cell phone or headset. SSA Martinez could not see where § 87(2)(b)’s hands were, citing the darkness of the area. SSA Martinez thought it was strange that § 87(2)(b) was standing by the commercial van, given that many commercial vans are broken into at this time of day. PO Schumacher rolled down his window and yelled, “Police,” while holding his shield displayed. SSA Martinez thought § 87(2)(b) made eye contact with the police vehicle before he turned back to the sidewalk and began walking southbound.

SSA Martinez reversed on Bradford Street to follow § 87(2)(b). When § 87(2)(b) reached the rear end of the van, he again turned and began to walk north. SSA Martinez drove north to follow § 87(2)(b). When § 87(2)(b) reached the front end of the van, he again turned and began walking southbound on Bradford Street. SSA Martinez again reversed to follow § 87(2)(b). When § 87(2)(b) turned left onto Blake Avenue, SSA Martinez followed him. Due to his initial observation of § 87(2)(b) standing near the van, coupled with his movements back and forth after the officers announced themselves and § 87(2)(b) appeared to see them, led SSA Martinez to suspect § 87(2)(b) may have either been attempting to break into or damage the van. SSA Martinez wanted to approach § 87(2)(b) to ask if he lived in the area, and what he was doing with the van. Aside from possibly doing “something illegal” with the van, SSA Martinez did not suspect § 87(2)(b) of other criminality.

SSA Martinez pulled parallel to § 87(2)(b) on Blake Avenue, exited his vehicle, approached § 87(2)(b) and said, “Police,” while displaying his shield to him. § 87(2)(b) stopped. SSA Martinez spoke to § 87(2)(b) and believed he tried to explain why § 87(2)(b) was stopped, though he did not remember what he said specifically, or what § 87(2)(b) said in return. SSA Martinez recalled that § 87(2)(b) seemed intoxicated in that he had bloodshot eyes, spoke with slurred speech, and smelled of alcohol, and expressed his displeasure at being stopped, though he did not remember what § 87(2)(b) said more specifically. SSA Martinez knew only that § 87(2)(b) did not provide an explanation as to why he was walking back and forth. After briefly speaking to § 87(2)(b) SSA Martinez walked away to check for damage to the van.

§ 87(2)(g)

While PO Schumacher did not remember whether he and SSA Martinez were driving northbound on Bradford Street on eastbound on Blake Avenue when they first saw § 87(2)(b) he recalled first observing § 87(2)(b) walking westbound on Blake Avenue before making a right turn to walk north on Bradford Street. PO Schumacher noticed that § 87(2)(b) was holding his cell phone up to his ear with one hand, though he did not see where his other hand was. § 87(2)(b) stepped in between the van, which was parked in front, and another vehicle, which was parked behind the van. PO Schumacher did not remember the make of this other vehicle, but knew that he lost sight of § 87(2)(b) for a few seconds until they pulled level with him, at which time PO Schumacher saw that § 87(2)(b) was standing so that he faced the rear of the van. PO Schumacher did not see § 87(2)(b) make contact with the van. PO Schumacher could not remember whether or not § 87(2)(b) moved back and forth repeatedly at the side of the van while SSA Martinez followed him. Once they stopped § 87(2)(b) on Blake Avenue, SSA Martinez almost immediately moved away to check on the van; PO Schumacher did not recall SSA Martinez interacting with § 87(2)(b) before doing so. When SSA Martinez walked away, PO Schumacher asked § 87(2)(b) questions, such as, “Is that your van? Was the vehicle behind it yours? What were you doing with the van?” PO Schumacher believed § 87(2)(b) denied that either vehicle was his. PO Schumacher did not remember what response § 87(2)(b) provided to his question about what he was doing with the van except that it “did not make sense.” PO Schumacher did not believe § 87(2)(b) ever communicated to him that he was lost, or trying to find a friend’s house; indeed, PO Schumacher thought § 87(2)(b) specified that he lived in the area.

A request for information is a general, non-threatening encounter in which an individual is approached for an articulable reason and asked briefly about his or her identity, destination, or reason for being in the area. Once the police officer’s inquiry focuses on the possible criminality of the person approached, and where the person might reasonably believe from the officer’s questions that he or she is suspected of some wrongdoing, the encounter rises to the level of a common-law inquiry, which must be supported by founded suspicion that criminality is afoot. People v. Hollman, 79 N.Y.2d 181 (1992) (BR 21)

An officer may stop a person only if he reasonably suspects that person is committing, has committed, or is about to commit a crime. People v. De Bour, 40 N.Y.2d 210 (1976) (BR 22)

Innocuous behavior, even in a high crime area, does not provide reasonable suspicion. People v. Hampton, 200 A.D.2d 466 (1994) (BR 23)

In People v. Solomon, 6 A.D.3d 335 (2004) (BR 24), an officer who observed a defendant casing vehicles, followed him for several blocks while the defendant continued the casing behavior, lost sight of the defendant briefly, and then saw him reappear holding a new machine not previously in his possession, and then abruptly change direction, gave the officer at minimum an objective reason to conduct a common-law inquiry; when the defendant, upon officer’s approach, provided an explanation for his possession of the machine that the officer had reason to believe was false, the circumstances then rose to the requisite level of reasonable suspicion to detain the defendant.

§ 87(2)(g)

[illegible]

Allegation E – Discourtesy: At Blake Avenue and Bradford Street in Brooklyn, PO William Schumacher spoke discourteously to § 87(2)(b)

SSA Martinez (BR 10) and PO Schumacher (BR 20) both denied making each of the above statements, and both denied using, or hearing each other use, any profanity whatsoever towards § 87(2)(b)

§ 87(2)(g)

Allegation C – Abuse of Authority: At Blake Avenue and Bradford Street in Brooklyn, SSA Robert Martinez frisked § 87(2)(b)

Allegation D – Abuse of Authority: At Blake Avenue and Bradford Street in Brooklyn, SSA Robert Martinez searched § 87(2)(b)

§ 87(2)(b) (BR 19) alleged that almost immediately once he was stopped, he kept both of his hands in the front pockets of his hooded jacket, and SSA Martinez said, “Keep your hands in your pockets. Do you have any weapons?” § 87(2)(b) replied that he did not. SSA Martinez then frisked the exterior of § 87(2)(b)’s jacket pockets before reaching inside of them. SSA Martinez then frisked the exterior of § 87(2)(b)’s sweatpants pockets. § 87(2)(b) acknowledged that he carried a soft package of newly-purchased underwear in his right sweatpants pocket, and a roll of money, or approximately \$126 in folded-over bills, behind the package of underwear. The package of underwear, as well as the money behind it, created a bulge in § 87(2)(b)’s sweatpants. When SSA Martinez felt this bulge, he allegedly asked, “What the fuck is that?” § 87(2)(b) believed that SSA Martinez had felt the money underneath the package of underwear. Without being instructed to do so, § 87(2)(b) withdrew the aforementioned \$126 and displayed it to SSA Martinez.

SSA Martinez (BR 10) said that within moments of stopping § 87(2)(b) he walked away to check on the van. When SSA Martinez returned from checking on the van, he noticed that there was a bulge underneath § 87(2)(b)’s right hip underneath the waistband of his pants. The bulge appeared round, bulky, and shapeless, and roughly three inches wide. SSA Martinez suspected that his bulge might be a weapon as he has had experiences in the past where individual wrapped guns in t-shirts, socks, handkerchiefs, and other soft items. SSA Martinez frisked the bulge, but could not feel it all the way through due to its bulk. He instructed § 87(2)(b) to remove the item from his pants. § 87(2)(b) complied, revealing that the bulge was in fact a pair of balled-up boxer shorts. SSA Martinez did not recall whether or not he frisked § 87(2)(b). SSA Martinez denied reaching into § 87(2)(b)’s pockets.

PO Schumacher (BR 20) said that when SSA Martinez stepped away to check the van, he noticed that § 87(2)(b) had a bulge about one inch wide, a half an inch thick, and stretching about six to eight inches from just underneath the waistband of his pants or underwear down to his upper- to mid-thigh area. The object was smooth, and not lumpy; although PO Schumacher initially said he could not tell whether or not the object was hard simply by looking at it, he later said that based upon its smoothness he assumed it was hard. Based upon this bulge and § 87(2)(b)’s uncooperative demeanor, PO Schumacher feared the object might be a weapon, possibly a “pipe, knife, or barrel of a gun.” PO Schumacher asked § 87(2)(b) what the object was and § 87(2)(b) refused to answer. When SSA Martinez returned, both SSA Martinez and PO Schumacher asked § 87(2)(b) what the bulge was. PO Schumacher could not remember what response § 87(2)(b) gave exactly, but knew he specified that it was not a weapon. PO Schumacher and SSA Martinez asked § 87(2)(b) to remove the object. When § 87(2)(b) did, it was revealed to be a pair of underwear rolled up tightly. PO Schumacher believed he frisked § 87(2)(b) at some juncture, but could not say at what point he did so. PO Schumacher did not see SSA Martinez frisk § 87(2)(b). PO Schumacher denied searching § 87(2)(b) or seeing SSA Martinez do so.

A frisk is permissible only if an officer possesses a particularized reasonable suspicion that a suspect is armed and dangerous. People v. Gonzalez, 295 A.D.2d 183 (2002) (BR 25) For a bulge in a suspect’s clothing to justify a frisk, the bulge’s size, shape, and placement must support the conclusion that the bulge is a weapon. United States v. Jackson, 2015 U.S. Dist. LEXIS 98980

(S.D.N.Y.) (BR 26) An unidentifiable bulge which is readily susceptible of an innocent as well as a guilty explanation is not sufficient to justify a frisk. People v. Harris, 122 A.D.2d 942 (2014) (BR 27) A suspect's refusal to state whether he possesses a weapon cannot provide reasonable suspicion to conduct a frisk. People v. Square, 20 Misc.3d 1126(A) (N.Y.Crim. St. 2008) (BR 28) The tolerable duration and scope of police inquiries are determined by the seizure's underlying justification. Rodriguez v. United States, 575 U.S. (2015) (BR 29)

Once the limited intrusion of a protective frisk fails to reveal a weapon and the basis for the officer's fear for his safety has abated, the officer may not search an individual. People v. Rodriguez, 856 NYS 2.d. 502 [Sup. Bronx] (2008) (BR 30) An officer cannot seize an object in order to make sure it is not a weapon if the object does not resemble or feel like a weapon. People v. Robinson, 125 A.D.2d 259 (1st Dept.) (1986) (BR 31) Having an individual empty their pockets or bag is the same as conducting a search of the person. People v. Van Lipscomb, 579 N.Y.S. 2d 302, 303 (4th Dept.) (1992) (BR 32)

It is undisputed that there was a bulge at § 87(2)(b)'s right side, roughly level with his waistband area. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

In § 87(2)(b)'s account, SSA Martinez frisked areas of his body aside from where he admittedly had a bulge and reached into the pockets of his jacket without justification even before he patted down the area of § 87(2)(b)'s body where the bulge was observed.

In SSA Martinez's account, he first checked the van that he suspected § 87(2)(b) of damaging or attempting to break into, confirming that § 87(2)(b) had not committed the crime for which he was stopped. Only upon returning to where PO Schumacher had § 87(2)(b) stopped did SSA Martinez observe the bulge at § 87(2)(b)'s right waistband, which he described as being bulky, soft, and about three inches wide. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

SSA Martinez and PO Schumacher both characterized § 87(2)(b) as being intoxicated and "belligerent" in that he said, "I don't have to talk to you. I don't have to answer your questions," but neither described § 87(2)(b) displaying behavior indicative of physical

resistance or violence. § 87(2)(g)

Although SSA Martinez acknowledged that he frisked the object and felt it to be soft, he “could not feel it all the way through,” and thus, without any further indication that the object was a weapon, or that it was a soft object wrapped around a weapon, ordered § 87(2)(b) to remove it. § 87(2)(g)

§ 87(2)(b) testified that he thought SSA Martinez may have felt the wad of folded-over bills he kept behind the package of underwear; § 87(2)(g)

SSA Martinez could not recall whether or not he frisked any other part of § 87(2)(b)'s body aside from the right pocket where the bulge was observed. § 87(2)(g)

Allegation F – Force: At Blake Avenue and Bradford Street in Brooklyn, PO William Schumacher used physical force against § 87(2)(b)

It is undisputed that PO Schumacher used some physical force against § 87(2)(b) although the extent of the physical force used is disputed.

§ 87(2)(b) (BR 19) said that when SSA Martinez stepped away from the scene, PO Schumacher told § 87(2)(b) “Cross your legs.” § 87(2)(b) asked, “Cross my legs?” PO Schumacher said, “If you’re not going to cross your legs, I’m going to put you in fucking handcuffs.” § 87(2)(b) did not cross his legs or otherwise move, and said, “Do what you got to do...put me in fucking handcuffs.” PO Schumacher then kned § 87(2)(b) in his groin (in his telephone statement, § 87(2)(b) said PO Schumacher kicked him once), gripped § 87(2)(b)'s arms, turned him around, and pushed him from behind so that § 87(2)(b) was face-down against the hood of a civilian vehicle parked at the curb. § 87(2)(b) sustained pain to his groin, as well as a bruise to his back where PO Schumacher forcefully pushed him.

At § 87(2)(b) on § 87(2)(b), § 87(2)(b) went to § 87(2)(b) (BR 33). § 87(2)(b) reported that he had been kicked in the back and groin repeatedly by police officers and complained of back and groin pain. Tenderness to palpation of § 87(2)(b)'s lower back was noted, but no injuries were otherwise documented, and § 87(2)(b) refused a

pelvic exam. § 87(2)(b) was given a muscle relaxant and two painkillers, Toradol and ibuprofen, and then released.

PO Schumacher (BR 20) said that when SSA Martinez left, he observed the bulge in § 87(2)(b)'s pants. PO Schumacher asked § 87(2)(b) about the bulge. § 87(2)(b) refused to answer. Because of the bulge, because § 87(2)(b) was uncooperative with answering PO Schumacher's questions, because § 87(2)(b) was, at that time, suspected of breaking into a vehicle, and because § 87(2)(b) appeared intoxicated and therefore his ability to make "sound decisions" seemed impaired, PO Schumacher feared for his safety.

PO Schumacher consequently ordered § 87(2)(b) to place his hands behind his back. § 87(2)(b) complied. PO Schumacher then ordered § 87(2)(b) to turn around, gripped him by his arms, and turned him to face a vehicle parked at the curb. PO Schumacher believed § 87(2)(b)'s front may have made contact with the vehicle, but denied forcefully pushing him against it. PO Schumacher held § 87(2)(b) in this position until SSA Martinez returned. PO Schumacher never placed § 87(2)(b) in handcuffs.

PO Schumacher denied that he ever knelt § 87(2)(b) in the groin, or saw any officer do so. PO Schumacher acknowledged that he will occasionally tell civilians to "cross their legs," as that makes it more difficult for civilians to potentially flee, though he did not remember whether or not he did so in his case.

SSA Martinez (BR 10) likely would not have been in a position to witness this allegation even if it did occur.

Officers must use the minimum physical force necessary to overcome resistance and effect an arrest. Patrol Guide Procedure 203-11 (BR 34)

§ 87(2)(g)

Allegation G – Abuse of Authority: At the 75th Precinct stationhouse, Sgt. Steven Farrell did not process § 87(2)(b)'s complaint regarding officers.

It is undisputed that after SSA Martinez and PO Schumacher released § 87(2)(b) he went to the 75th Precinct stationhouse to file a complaint about his encounter with them. It is also undisputed that no complaint was filed on § 87(2)(b)'s behalf at the 75th Precinct stationhouse.

§ 87(2)(b) (BR 19) said that when he arrived to the 75th Precinct stationhouse, he spoke to an officer behind the front desk and requested to file a complaint.

The officer told § 87(2)(b) that he would need to consult with his supervisor and then left the front desk area. As discussed in greater detail above, the investigation was not able to identify the officer with whom § 87(2)(b) claimed to have spoken, but this officer's supervisor was identified by the investigation as Sgt. Farrell. § 87(2)(b) said he never saw or spoke with a supervisor at the 75th Precinct stationhouse. When the unidentified officer returned, he told § 87(2)(b) that they had no forms readily available for § 87(2)(b)'s completion, and that they would have to download them and print them out. § 87(2)(b) waited approximately half an hour for the forms before deciding to simply call the CCRB, whose number he obtained from a sign above the front desk. Records reflect that § 87(2)(b) called the CCRB to file his complaint at 3:58 a.m. on November 28, 2015. § 87(2)(b) believed that the

officer he spoke with at the 75th Precinct stationhouse was attempting to discourage him from filing a complaint.

Sgt. Farrell (BR 18) said he was behind the front desk when § 87(2)(b) came into the stationhouse. Sgt. Farrell did not remember who else was behind the desk with him, and did not notice § 87(2)(b) speaking with any other officer at the front desk. § 87(2)(b) initially told Sgt. Farrell that he wanted to file a complaint against officers. § 87(2)(b) refused to provide his pedigree information or to identify the officers to Sgt. Farrell, though Sgt. Farrell noted that this refusal would not in and of itself prevent § 87(2)(b) from filing the complaint. § 87(2)(b) then began to insist upon speaking with SSA Martinez. While Sgt. Farrell spoke with § 87(2)(b), SSA Martinez returned to the 75th Precinct stationhouse from conducting patrol. SSA Martinez then spoke to § 87(2)(b). Sgt. Farrell could not remember whether or not he ever provided § 87(2)(b) with the forms to file a complaint, nor could he recall running out of the complaint forms at any point. Sgt. Farrell believed that once SSA Martinez spoke to § 87(2)(b) it was SSA Martinez's responsibility to file a complaint on § 87(2)(b)'s behalf if § 87(2)(b) still wished to do so.

SSA Martinez (BR 20) had no memo book entries for his entire tour (BR 09), and denied that he ever again interacted with § 87(2)(b) after leaving Blake Avenue and Bradford Street in Brooklyn. SSA Martinez did not believe he ever went back to the 75th Precinct stationhouse before the end of his tour, though he had no memo book entries whatsoever about his activities on November 28, 2015. PO Schumacher (BR 20) similarly testified to having no further interaction with § 87(2)(b) after leaving Blake Avenue and Bradford Street, and he did not provide his memo book to the CCRB. The only police document that might verify whether or not SSA Martinez ever returned to the stationhouse before the end of his tour, the interrupted patrol log, was requested from IAB on December 29, 2015, and was not received until February 29, 2016 (BR 35). There is no indication from the interrupted patrol log that SSA Martinez and PO Schumacher ever returned to the command before their scheduled end of tour. There is no entry on the command log regarding § 87(2)(b)'s arrival at the 75th Precinct stationhouse (BR 36).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

[illegible]

Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date